

(3) c.s. 100

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

Writ Petition No. 1229/2004

Petitioner:

Shiv Charan Sahu, S/o Shri Badri Prasad Sahu, aged about 43 years, Plant Assistant-II, CSEB Korba West, Korba (CG), R/o F/827, STPP CSEB Colony, Korba West Korba (CG) District Korba (CG)

Versus

Respondents:1.

Chhattisgarh State Electricity Board, through its Executive Director(Generation) CEB Korba West.

Chairman, State Industrial Court, Raipur (CG)

Presiding Officer, Labour Court, Bilaspur (CG)

P.R. No. 12/5/04
Presented by Shri. N. Jay Deshmukh
27-11-04
3.

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
W. P. No.1229 of 2004

Petitioner : Shiv Charan Sahu

Versus

Respondents : Chhattisgarh State Electricity Board and
others

Post for order on 7th February, 2007.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No.1229 of 2004

Petitioner : Shiv Charan Sahu

Versus

**Respondents : Chhattisgarh State Electricity Board and
others**

Shri Prafull Bharat, counsel for the petitioner.

Shri Yogesh Pandey, counsel for the respondent No. 1.

ORDER

(Passed on 7th day of February, 2007)

1. By this petition, the petitioner challenges the validity of the order dated 15th April, 2004 (Annexure P/1), passed by the Industrial Court, Chhattisgarh, Raipur, the order dated 5.7.96 (Annexure P/5), passed by the Madhya Pradesh Electricity Board, dismissing the petitioner as Plant Assistant Grade-II from the services with immediate effect and the order dated 10.05.04 (Annexure P/8), passed by the Chhattisgarh State Electricity Board, dismissing the petitioner, pursuant to the order dated 15th April, 2004, passed by the Industrial Court.
2. The indisputable facts, in nutshell, are that the petitioner was employed as Plant Assistant Grade-II and was posted at Korba Power Plant. The petitioner was served with a charge-sheet on 23.6.1995 (Annexure P/3), containing three charges alleging that the petitioner, while performing his duties as an Assistant to the Store Keeper Grade-II in E&M Stores Korba West, had issued scrap conveyor belt to Birsinghpur without properly verifying the documents which was

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subsequently found to be fake and false and as such, the same caused loss of the property worth Rs. 15 Lakhs to the respondent No. 1. The petitioner submitted his detailed reply dated 11.7.1995 (Annexure P/4) and the enquiry was held by the order dated 5.7.96 (Annexure P/5). The petitioner was dismissed from the services on the post of Plant Assistant Grade-II, holding that the departmental enquiry was proper and legal and the findings of misconduct was proved in the enquiry.

3. Being aggrieved, the petitioner preferred an appeal before the Labour Court, Bilaspur in Case No. 121/M.P.I.R./97. The Labour Court, by its order dated 06.04.2002 (Annexure P/6), held as under:-

"8. उपरोक्त विवेचन के आधार पर मेरा मत है कि आवेदक के विरुद्ध जो गृह जांच की गई है, उसमें प्रक्रियात्मक रूप से कोई त्रुटि नहीं है। आवेदक द्वारा जो आक्षेप जांच के संबंध में लगाए गए हैं, वे अमान्य किए जाकर निरस्त किए गए हैं। अतः आवेदक के विरुद्ध संपादित गृह जांच की कार्यवाही वैध व उचित होने से जांच कार्यवाही वैध व उचित होना निर्णित किया जाता है तथा वाद प्रश्न क्रमांक 1 का निराकरण नकारात्मक रूप से "नहीं" के रूप में किया जाता है।"

Thereafter, the Labour Court, by its order dated 15.05.2002 (Annexure P/2) considered the gravity of misconduct and the imposition of punishment as to whether the same was proportionate. The Labour Court, after having examined the evidences produced before the Labour Court as per order dated 06.04.2002, came to the conclusion as under:-

"2. साक्ष्य के उपरोक्त विवेचन से यह स्पष्ट है कि आवेदक मूलतः तकनीकी श्रेणी का कर्मचारी था, जबकि आवेदक से लिपिकीय कार्य लिया गया है। साक्षियों द्वारा किए गए कथन से ही यह स्पष्ट व प्रमाणित है कि

अधिकारी श्री द्विवेदी के निर्देशानुसार ही कन्वेयर बेल्ट जारी किए गए हैं। यद्यपि श्री द्विवेदी ने इस तथ्य से इन्कार किया है, किन्तु अन्य संबंधित अधिनस्थ कर्मकार साक्षियों ने उक्ताशय का ही कथन किया है। रीलिजिंग आर्डर पर जो कार्यवाही की गई, उनपर आवेदक से वरिष्ठ लोगों के हस्ताक्षर होना भी प्रमाणित है। साक्षियों ने आवेदक के कार्य पर सन्तोष भी व्यक्त किया है। टी0वी0नं0 10016 एवं 10034 पर आवेदक के हस्ताक्षर नहीं होना भी साक्ष्य से प्रमाणित है।

साक्षी भण्डारपाल एम0एक्का ने यह भी बतलाया है कि मीटर में इश्यू करना गलत नहीं था, क्योंकि स्टोर एकाउंटिंग उसके समतुल्य वजन के आधार पर भी जा सकती है। साक्ष्य से यह भी प्रमाणित है कि कार्यपालन अभियंता श्री द्विवेदी के मौखिक निर्देश पर ही कार्यवाही की गई थी तथा भण्डारपाल श्री एक्का ने यह भी स्वीकार किया है कि पूर्व में भी मौखिक निर्देश पर कार्यवाही करते थे। किसी विभाग के वरिष्ठ अधिकारी के निर्देश पर अधिनस्थ कर्मचारियों द्वारा कार्य संपादित किया जाना, एक सामान्य प्रक्रिया है। यह सपधारणा की जा सकती है कि आवेदक द्वारा वरिष्ठ के आदेश के पालन में ही कार्य किया गया है। ऐसी दशा में मेरा मत है कि आवेदक पर आरोपित दुराचरण प्रमाणित नहीं है। आवेदक अधिक से अधिक लापरवाहीपूर्ण कृत्य का दोषी माना जा सकता है। अन्यथा भी आवेदक तकनीकी श्रेणी का कर्मचारी था, तथा आवेदक जिस पद पर नियोजित था, उससे भिन्न कार्य करवाए जाने व उसमें त्रुटि के लिए आवेदक को पूर्णतः दोषी नहीं माना जा सकता है। अतः वाद प्रश्न क्रमांक 2 का निराकरण नकारात्मक रूप से "नहीं" के रूप में किया जाता है तथा यह निर्णित किया जाता है कि आवेदक पर बेईमानीपूर्ण ढंग से झूठे दस्तावेजों का उपयोग करके मण्डल संपत्ति के दुरुपयोग करते हुए स्क्रेप/डिस्काडेड कन्वेयर बेल्ट जारी किए जाने व स्क्रेप डिस्काडेड कन्वेयर बेल्ट को दुराशय से लंबाई में (मीटर से पैमाने पर) जारी किए जाने व जानबूझकर कन्वेयर बेल्ट के दुरुपयोग को छिपाने बाबत आरोप प्रमाणित नहीं है, किन्तु आवेदक बिना अभिलेखों को प्रमाणित किए मात्र मौखिक निर्देशानुसार कार्य करने से लापरवाहीपूर्ण कृत्य का आंशिक रूप से दोषी है।"

It was accordingly held that in view of the finding that the petitioner was guilty of negligence and the punishment of dismissal from service was not proper, the Labour Court in exercise of its power under the provision of Section 107-A of the Madhya Pradesh Industrial

Relations Act, 1960 (hereinafter referred to as "the Act, 1960") quashed the order of dismissal and directed reinstatement of the petitioner with punishment of withholding of one month's salary.

4. Being aggrieved, the employer/respondent No. 1 preferred an appeal before the Industrial Court, Chhattisgarh, Raipur in Case No. 195/M.P.I.R. Act/A-II/2002. The petitioner also preferred an appeal before the Industrial Court, Chhattisgarh, Raipur in case No. 196/M.P.I.R. Act/A-II/2002. The Industrial Court without considering the evidences produced before the Labour Court came to the conclusion that the Labour Court has committed grave irregularity by substituting its own opinion in the legal and valid finding of the enquiry officer. The Industrial Court completely ignored the direction of the superior officers for release of consignments. Accordingly, the appeal of the employer/respondent was allowed and the order of the Labour Court directing reinstatement was set aside. The appeal filed by the petitioner was dismissed vide order dated 15th April, 2004. The petitioner was, thereafter, removed from service by the order dated 10.05.2004 (Annexure P/8).
5. Shri Prufull Bharat, learned counsel appearing for the petitioner would submit that the finding of the Industrial Court that the Labour Court committed grave irregularity in directing reinstatement is perverse. The Labour Court has examined the evidences and came to the conclusion that the evidence adduced by the employer in the departmental proceedings does not establish the misconduct and it

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was the case of negligence. On the question of substitution of his own opinion, it was contended that the Labour Court was fully justified under the provisions of Section 107-A of the Act, 1960. The Labour Court can amend the order of imposition of penalty even after holding that the enquiry was proper in procedural aspect i.e. in respect of examination of the evidence, show-cause notice and conduct of the enquiry, not on the finding recorded by the enquiry officer. The Labour Court is fully empowered to re-appraise the evidence in the domestic enquiry and come to a different finding.

6. Shri Yogesh Pandey, learned counsel appearing for the respondent No. 1, supported the impugned order dated 15th April, 2004 (Annexure P/1), passed by the Industrial Court.
7. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.
8. On hearing submissions of the parties and perusing the records, it is apparent that the Labour Court has examined the enquiry report in depth and has further examined the evidences produced before him. The finding of the Labour Court is just, proper and valid and needs no interference. The observation of the Industrial Court that the Labour Court committed grave irregularity is without any basis. The submission of the petitioner merits acceptance as the same was based on evidence on record. Learned counsel appearing for the respondent No. 1 has not rebutted any factual statement made by learned counsel appearing for the petitioner.

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9. Admittedly, the releasing orders were issued under the signature of the superior authorities in case of two of the TV's bearing No. 10016 and 10034. There was no signature of the petitioner and the enquiry officer has found proved. Even the said TV's were released under the order and signatures of the superior authorities. The entire departmental proceedings were done at Korba and for recording of evidence of other witness, the venue was shifted to Jabalpur. The petitioner could not produce defence witnesses as the petitioner was not paid any subsistence allowance during that period. The employer/respondent has adopted different yardsticks for different authorities involved in the said incident. No enquiry was conducted against Mr. Rajesh Verma, Executive Engineer, Mr. J.L. Karkar, Store Keeper and Mr. S.R. Rathore, PA II, though the charge-sheet was given to them. Mr. J.K. Lahari, Assistant Engineer also involved in the incident was terminated from the services and on modification in appeal he was taken back in service as Junior Engineer. Mr. M. Khaka was terminated from the services, on the order passed by the Labour Court, setting aside the termination order, he was taken back in service. The enquiry report and show-cause notice before imposition of punishment was also not supplied to the petitioner, being violative under Article 311 (2) of the Constitution of India.

10. The Supreme Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another¹ held that the findings, recorded by the enquiry officer in absence of defence witnesses, who could not be

produced before the enquiry officer on account of his financial problem occasioned by non-payment of subsistence allowance, stand vitiated. In the present case, it was not disputed that subsistence allowance was not paid to the petitioner during pendency of the departmental proceedings as it was not suggested by the respondents that the petitioner had any other source of income.

11. The Supreme Court in the case of **Engineering Laghu Udyog Employees' Union Vs. Judge, Labour Court and Industrial Tribunal and another²** held in para 6, as under:-

"6. Section 11-A of the Industrial Disputes Act, 1947 (for short "the Act") confers a wide power upon the Labour Court, Tribunal or the National Tribunal to give appropriate relief in case of discharge or dismissal of workman. While adjudicating on a reference made to it, the Labour Court, Tribunal or the National Tribunal, as the case may be, if satisfied that the order of discharge or dismissal was not justified, may, while setting aside the same, direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Thus, only in a case where the satisfaction is reached by the Labour Court or the Tribunal, as the case may be, that an order of dismissal was not justified, the same can be set aside....."

12. In the case of **Govt. of A.P. and others Vs. Mohd. Nasrullah Khan³**, the Supreme Court held that it is well settled that the High Court exercising of judicial review under Article 226/227 of the

Constitution of India does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. In the present case, the Industrial Court has committed serious error by ignoring the findings of the Labour Court recorded after re-appraisal of the evidences produced before the enquiry officer as well as the additional evidences adduced before the Labour Court.

13. Thus, the impugned order dated 15th April, 2004 (Annexure P/1), passed by the Industrial Court, Chhattisgarh, Raipur and order dated 5.7.96 (Annexure P/5), passed by the Madhya Pradesh Electricity Board, dismissing the petitioner as Plant Assistant Grade-II from services with immediate effect are bad and quashed. Consequently, the order dated 10.05.04 (Annexure P/8), passed by the Chhattisgarh State Electricity Board, dismissing the petitioner, pursuant to the order dated 15th April, 2004, passed by the Industrial Court is bad and deserve to be and is set aside. The impugned order dated 06.04.2002, passed by the Labour Court, Bilaspur (Annexure P/6) is affirmed and restored.

14. The writ petition is accordingly allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1. {(1999) 3 SCC 679}
 2. {(2003) 12 SCC 1}
 3. {(2006) 2 SCC 373}